

# NEW MEXICO SCHOOL FOR THE DEAF

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July 17, 2012

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street SW  
Washington, DC 20554  
ELECTRONICALLY FILED VIA ECFS

**Re CC Docket No. 02-6**  
**In the matter of Request for Review by New Mexico School for the Deaf of a**  
**Decision of the Universal Service Administrator**

Dear Secretary Dortch,

With this letter New Mexico School for the Deaf ("NMSD") requests review of a finding<sup>1</sup> by the Universal Service Fund Administrator that funds were disbursed to NMSD in violation of applicable FCC rules.

NMSD also requests that the Wireline Competition Bureau ("Bureau") exercise its best efforts to act on this appeal within the 90-day timeline specified at 47 CFR § 54.724. NMSD is mindful of the broad scope of responsibility shouldered by the Wireline Competition Bureau and is very respectful of the dedicated service rendered daily by Bureau staff. However, since unfortunately it is our special needs students who will bear the consequences of our inability to effectively plan for the operation of the school while this matter is unresolved, we would ask only that the Bureau do its best to expedite its full examination of the evidence and to render a reasoned and fair judgment.

## **Background**

NMSD is a school dedicated to serving the special educational needs of about 150 New Mexico deaf and hearing-impaired students.

In January of this year USAC initiated a Program Quality Assurance assessment of one particular NMSD funding request for Funding Year 2011. As part of its assessment USAC requested from NMSD certain documentation for that funding request, including documentation of technology plan approval.

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<sup>1</sup> *Notification of Improperly Disbursed Funds Recovery Letter* dated 6/27/2012 (attached as Exhibit A)

NMSD was able to satisfy all of USAC's documentation requests other than evidence of timely formal technology plan approval. Although NMSD was able to locate its FY2009-FY2011 technology plan, it was not able to locate in its own records a technology plan approval letter. Furthermore, due to reorganization within the New Mexico Public Education Department ("NM PED"), the bureau which had been responsible for technology plan approval has been dissolved, and a different division within NM PED is now responsible for technology plan approvals.

The end result is that although NMSD is certain that prior to the start of the 2009 Funding Year it had a written technology plan in place for Funding Years 2009 through 2011, NMSD was not able to produce evidence that the technology plan had been approved prior to the start of the 2009 Funding Year.

In order to demonstrate that NMSD had compiled a technology plan with all of the required elements, in February of this year NMSD submitted its FY2009-FY2011 technology plan to the current technology plan approver (NM PED's Information Technology Division) for evaluation. We have attached an email<sup>2</sup> reporting the results of their evaluation. Note that the Information Technology Division confirms that records exist showing that we had submitted a technology plan for evaluation on a timely basis, and that they now find that this plan did comply with state (and implicitly with E-Rate) requirements as they existed at the start of the 2009 Funding Year.

Should the Bureau desire any additional information in its evaluation of this waiver petition, NMSD pledges to respond to any such request on a timely basis and to the best of its ability.

### **Analysis**

Although NMSD was not able to provide evidence showing compliance with one technical requirement of § 54.508, NMSD did in good faith plan for the implementation of new technology. Furthermore, the elements of the plan and even the timeliness of the preparation of the plan did meet the requirements of § 54.508.

In the *Al-Ishan Academy Order*<sup>3</sup>, the Bureau found that a waiver is justified for applicants who did not fully comply with the technical requirements of § 54.508, "yet in good faith planned for the implementation of new technology in their schools in accordance with state, local, or other internal requirements". In the instant case NMSD met and exceeded that standard, as the content of the plan itself was independently found to fully meet the content standards of § 54.508.

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<sup>2</sup> Email from Michael Archibeque (Chief Information officer, New Mexico Public Education Department) to Sam Montoya (Information Technology Manager, NMSD) dated 3/5/2012 (attached as Exhibit B)

<sup>3</sup> *Al-Ishan Academy Order*, 25 FCC Rcd 17744

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July 17, 2012  
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In both the *Al-Ishan Academy Order* and the earlier *Brownsville Order*<sup>4</sup>, the Bureau and the Federal Communications Commission (“Commission”) respectively found that the petitioners, even if not technically complying with the technology plan rules, had satisfied the policy behind the requirements; and they further found that requiring technical compliance with certain technology plan rules neither furthers the universal service objectives of 47 USC § 254(h) nor serves the public interest, and would instead cause undue hardship to the applicants. By contrast, the Commission found in the *Brownsville Order* that waiving the applicable technology plan rules would serve the public interest by preserving and advancing universal service.

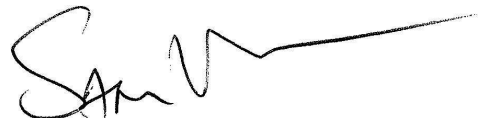
The cited orders were consistent with the *Bishop Perry Order*<sup>5</sup>, where the Commission found that under certain circumstances, rigid adherence to certain E-Rate rules and requirements that are “procedural” in nature does not promote the goals of 47 USC § 254 – ensuring access to discounted telecommunications and information services to schools and libraries – and therefore does not serve the public interest.

#### **Request for Relief**

For the reasons stated in this letter, NMSD respectfully requests that the Bureau find that there was no material violation of Schools and Libraries program rules, and that no recovery of disbursed funds is warranted.

Finally, on behalf of our current students, NMSD respectfully requests that the Bureau expedite consideration of this petition. Timely action by the Bureau would support the goals of the E-Rate program, especially with respect to our current students whose educational success would be compromised by an adjustment of previously disbursed funding.

NEW MEXICO SCHOOL FOR THE DEAF



Sam Montoya  
IT Manager

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<sup>4</sup> *Brownsville Order*, 22 FCC Rcd 6045

<sup>5</sup> *Bishop Perry Middle School Order*, 21 FCC Rcd 5316

## APPENDIX A

to Request for Review by New Mexico School for the Deaf of a Decision of the Universal Service Administrator



Schools & Libraries Division

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Notification of Improperly Disbursed Funds Recovery Letter  
Funding Year 2010: July 1, 2010 - June 30, 2011

June 27, 2012

Sam Montoya  
NEW MEXICO SCHOOL FOR THE DEAF  
1060 CERRILLOS RD  
SANTA FE, NM 87505

Re: Form 471 Application Number:	749552
Funding Year:	2010
Applicant's Form Identifier:	NMSD471P2-10
Billed Entity Number:	99286
FCC Registration Number:	0011995503
SPIN:	143025351
SPIN Name:	Harris Technology Services, Inc.
Service Provider Contact Person:	Della Harris

Our routine review of Schools and Libraries Program (Program) funding commitments has revealed certain applications where funds were disbursed in violation of Program rules.

In order to be sure that no funds are used in violation of Program rules, the Universal Service Administrative Company (USAC) must now recover these improper disbursements. The purpose of this letter is to inform you of the recoveries as required by Program rules, and to give you an opportunity to appeal this decision. USAC has determined the applicant is responsible for all or some of the Program rule violations. Therefore, the applicant is responsible to repay all or some of the funds disbursed in error.

This is NOT a bill. The next step in the recovery of improperly disbursed funds process is for USAC to issue you a Demand Payment Letter. The balance of the debt will be due within 30 days of that letter. Failure to pay the debt within 30 days from the date of the Demand Payment Letter could result in interest, late payment fees, administrative charges and implementation of the "Red Light Rule." The FCC's Red Light Rule requires USAC to dismiss pending FCC Form 471 applications if the entity responsible for paying the outstanding debt has not paid the debt, or otherwise made satisfactory arrangements to pay the debt within 30 days of the notice provided by USAC. For more information on the Red Light Rule, please see "Red Light Frequently Asked Questions (FAQs)" posted on the FCC website at [http://www.fcc.gov/debt\\_collection/faq.html](http://www.fcc.gov/debt_collection/faq.html).

TO APPEAL THIS DECISION:

You have to option of filing an appeal with USAC or directly with the Federal Communications Commission (FCC).

If you wish to appeal the Notification of Improperly Disbursed Funds decision indicated in this letter to USAC your appeal must be received or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. In your letter of appeal:

1. Include the name, address, telephone number, fax number, and email address (if available) for the person who can most readily discuss this appeal with us.
2. State outright that your letter is an appeal. Identify the date of the Notification of Improperly Disbursed Funds Recovery Letter and the funding request numbers you are appealing. Your letter of appeal must include the
  - Billed Entity Name,
  - Form 471 Application Number,
  - Billed Entity Number, and
  - FCC Registration Number (FCC RN) from the top of your letter.
3. When explaining your appeal, copy the language or text from the Funding Disbursement Recovery Report included with this letter that is the subject of your appeal to allow USAC to more readily understand your appeal and respond appropriately. Please keep your letter to the point, and provide documentation to support your appeal. Be sure to keep a copy of your entire appeal including any correspondence and documentation.
4. If you are an applicant, please provide a copy of your appeal to the service provider(s) affected by USAC's decision. If you are a service provider, please provide a copy of your appeal to the applicant(s) affected by USAC's decision.
5. Provide an authorized signature on your letter of appeal.

To submit your appeal to USAC by email, email your appeal to [appeals@sl.universalservice.org](mailto:appeals@sl.universalservice.org). USAC will automatically reply to incoming emails to confirm receipt.

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To submit your appeal to us by fax, fax your appeal to (973) 599-6542.

To submit your appeal to us on paper, send your appeal to:

Letter of Appeal  
Schools and Libraries Division - Correspondence Unit  
100 S. Jefferson Rd.  
P. O. Box 902  
Whippany, NJ 07981

For more information on submitting an appeal to USAC, please see the "Appeals Procedure" posted on our website.

If you wish to appeal a decision in this letter to the FCC, you should refer to CC Docket No. 02-6 on the first page of your appeal to the FCC. Your appeal must be received by the FCC or postmarked within 60 days of the date of this letter. Failure to meet this requirement will result in automatic dismissal of your appeal. We strongly recommend that you use the electronic filing options described in the "Appeals Procedure" posted on our website. If you are submitting your appeal via United States Postal Service, send to: FCC, Office of the Secretary, 445 12th Street SW, Washington, DC 20554.

#### FUNDING DISBURSEMENT RECOVERY REPORT

On the pages following this letter, we have provided a Funding Disbursement Recovery Report (Report) for the Form 471 application cited above. The enclosed Report includes the Funding Request Number(s) from the application for which recovery is necessary. See the "Guide to USAC Letter Reports" posted at <http://usac.org/sl/tools/reference/guide-usac-letter-reports.aspx> for more information on each of the fields in the Report. USAC is also sending this information to the service provider for informational purposes. If USAC has determined the service provider is also responsible for any rule violation on these FRN(s), a separate letter will be sent to the service provider detailing the necessary service provider action. The Report explains the exact amount the applicant is responsible for repaying.

Schools and Libraries Division  
Universal Services Administrative Company

cc:Della Harris  
Harris Technology Services, Inc.

Funding Disbursement Recovery Report  
for Form 471 Application Number: 749552

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Funding Request Number: 2079798  
Services Ordered: INTERNAL CONNECTIONS  
SPIN: 143025351  
Service Provider Name: Harris Technology Services, Inc.  
Contract Number: NMSD?]BM?]IC?]VOD  
Billing Account Number:  
Site Identifier: 99286  
Funding Commitment: \$126,000.45  
Funds Disbursed to Date: \$125,873.60  
Funds to be Recovered from Applicant: \$110,390.56

Disbursed Funds Recovery Explanation:

After a thorough investigation, it has been determined that funds were improperly disbursed for this funding request. During a review, it was determined that the technology plan for this entity, covering the relevant funding year, was not approved at the time of submission of the Form 486. Program rules require applicants to obtain approval of technology plans by parties qualified to approve technology plans, prior to submitting the Form 486, for services other than basic telecommunications service. Since this is not a request for basic telecommunications service, the technology plan for the relevant funding year needed to be approved prior to submitting the Form 486 or the start of services, whichever was earlier. Since this requirement was not met, USAC will seek recovery of \$110,390.56 in improperly disbursed funds from the applicant.

## APPENDIX B

to Request for Review by New Mexico School for the Deaf of a Decision of the Universal Service Administrator

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**From:** "Archibeque, Michael, PED" <Michael.Archibeque@state.nm.us>  
**To:** "Montoya, Sam" <sam.montoya@nmsd.k12.nm.us>  
**Sent:** Monday, March 05, 2012 4:56 PM  
**Subject:** Educational Technology Plan  
**Re:** Technology Plan for New Mexico School for the Deaf for the period 7/1/2009 through 6/30/2012

Dear Mr. Montoya:

The Educational Technology Bureau of the New Mexico Public Education Department (NM PED) was the agency which approved Educational Technology Plans for the State of New Mexico in 2009. The Educational Technology Bureau was dissolved in June 2011 due to administrative reorganization and the Information Technology Division of NM PED became the reviewing authority for the State in September 2011. Our tracking records indicate a Draft NMSFD Technology Plan was in review in 2/09 but was not finalized.

In February, we examined your 2009 Educational Technology Plan for renewal and found that this plan was compliant with the Technology Plan standards as they existed in June 30, 2009. Therefore, I ask that you re-submit your Plan in the new format authorized by PED in 2010 for review and approval to cover the periods 7/1/09 – 6/30/12 and 7/1/12 – 6/30/15.

If you have any questions, please do not hesitate to contact me. Thank you



**Michael A. Archibeque**

Chief Information Officer  
300 Don Gaspar  
Santa Fe, NM 87501  
(505) 827-4971  
[Michael.Archibeque@state.nm.us](mailto:Michael.Archibeque@state.nm.us)

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